

1. Contract Template for Buying or Leasing Water Rights

AGREEMENT NO XXXXXXXX TO TRANSFER WATER UNDER

**TRUST WATER RIGHTS PROGRAM
CHAPTER 90.42 RCW**

**BETWEEN
THE STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND
(Insert Water Right Holder Name)**

I. PURPOSE OF AGREEMENT AND STATEMENT OF INTENT

This Agreement is a contract between the parties to create a trust water right under Chapter 90.42 RCW.

The Department of Ecology and Water Right Holder enter into this Agreement for Trust Water for the following reasons:

- 1) To *sell (or lease)* designated *all or portions* of (Insert Name of Water Right Holder)'s water rights to the Department of Ecology for transfer to the Trust Water Rights Program;
- 2) To protect the acquired water from relinquishment under provisions of Chapter 90.14 RCW;
- 3) To tentatively determine the amount of water to be transferred to the Trust Water Rights Program under Chapter 90.42 RCW; and
- 4) To document water put to beneficial use and the number of irrigated acres based on current and historical records.

II. PARTIES TO THIS AGREEMENT

The Department of Ecology and (Insert Water Right Holder's name) are parties to this agreement. Ecology's contact is:

Insert Ecology Name
Insert Ecology Address
Insert phone (, FAX).

The (Insert Water Right Seller Name) contact is:

Insert Name
Insert Address
Insert phone (, FAX).

III. EVALUATION OF WATER USE AND TRUST WATER

This Agreement makes a tentative determination of water rights for purposes of this transfer only. It is not a legally binding quantification of the (Insert water Rights Holder)'s underlying water rights for the property.

Quantification of water applied to a beneficial use under a water right and the amount of water transferable to other purposes is based on analysis of "reasonably efficient practices". In making a tentative determination of the water right, Ecology considers the instantaneous amount of diversion as written on the face of the certificate and as historically applied to beneficial use; the annual volume of water diverted, as written and as historically applied to beneficial use; the described place of use and that established through practice; and the season and purposes of use.

A. TRANSFERS TO THE TRUST WATER RIGHTS PROGRAM

The water rights acquired under this agreement will be administered under Chapter 90.42 RCW. To determine the amount of water available for the trust water rights program, Ecology evaluates the historic diversion and beneficially used amount of water that has been established for the property.

The amount of water that can be transferred to the trust program will be reserved as trust water fully designated for instream flow purposes. The trust water for instream flows will retain its original priority date.

B. APPLICATION FOR CHANGE OF USE

Water purchased or leased under this agreement will be protected from relinquishment under provisions of Chapters 90.14 and 90.42 Revised Code of Washington. Ecology will process an application to change the place and purpose of use of the purchased water rights to instream use.

C. TENTATIVE DETERMINATION OF BENEFICIAL USE/ AMOUNT OF PURCHASED WATER

The (Water Rights Holder name) water rights are associated with their property. The property is (location of parcel or parcels). The water rights certificates, with legal descriptions are incorporated by reference and attached as Appendix A.

The amount of irrigated acreage has been determined by (verification method). The entire property encompasses -----acres. Ecology and the (Insert Water Right Holder name) agree that ----- acres have been historically irrigated, and that these same -----acres are currently irrigated.

Ecology calculated the net crop irrigation requirement using (insert method used). The result is ----- inches per acre per year, or just over ---- acre/feet per acre. This calculation matches the calculations completed by the (Insert water

right holder name), and the amount that the parties agree to use for purposes of this agreement.

Ecology will buy the water right associated with ---- irrigated acres.

IV. CONSERVATION EASEMENT/RIPARIAN BUFFER

Insert requirements or delete if not applicable

V. TERMS OF THE LEASE

Insert if applicable

VI. WATER PURCHASE/OPTION TO PURCHASE ADDITIONAL WATER

Complete if applicable

VII. LAND TRANSFER/ESCROW ACCOUNT

(escrow instruction if used)

VIII. EFFECTIVE DATE OF AGREEMENT

The effective date of this agreement is the date it is signed by the Department of Ecology.

IX. AGREEMENT AMENDMENT

This agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

X. TERMINATION FOR CAUSE

If for any cause, any party does not fulfill in a timely and proper manner its obligations under this agreement, or if any party violates any of these terms and conditions, the aggrieved party will give the other parties written notice of such failure or violation. The responsible party will be given the opportunity to correct the violation or failure within 15 working days. If the failure or violation is not corrected, and is a material breach of this agreement, this agreement may be terminated immediately by written notice of the aggrieved party to the others.

XI. GOVERNANCE

This agreement is entered into pursuant to and under the authority granted by the laws of the state of Washington and any applicable federal laws. The provisions of this agreement shall be construed to conform to those laws.

In the event of an inconsistency in the terms of this agreement, or between its terms and any applicable statute or rule, the inconsistency shall be resolved by giving precedence in the following order:

- a. applicable state and federal statutes and rules;
- b. statement of work; and
- c. Any other provisions of the agreement, including materials incorporated by reference.

XII. ASSIGNMENT

The work to be provided under this agreement and any claim arising thereunder, is not assignable or delegable by any party in whole or in part, without the express prior written consent of the other parties, which consent shall not be unreasonably withheld.

XIII. WAIVER

A failure by any party to enforce its rights under this agreement shall not preclude that party from subsequent enforcement of such rights and shall not constitute a waiver of any other rights under this agreement unless stated to be such in a writing signed by an authorized representative of the party and attached to the original agreement.

XIV. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, if such remainder conforms to the requirements of applicable law and the fundamental purpose of this agreement, and to this end the provisions of this agreement are declared to be severable.

XV. ALL WRITINGS CONTAINED HEREIN

This agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS of the foregoing provisions, the parties have executed and delivered this agreement as of the date set forth below.

(Insert Name of Water Right Holder)

Date

State of Washington

County of _____

Signed or attested before me on _____ by _____.

(Seal or stamp)

Title _____

My appointment expires _____ .

DEPARTMENT OF ECOLOGY

(Name of Ecology signatory)

Date

State of Washington

County of _____

Signed or attested before me on _____ by _____.

(Seal or stamp)

Title _____

My appointment expires _____